LIBRARY
SUPREME COURT, U. S.

FILED
MAR 28 1974
MICHAEL RODAK, JR., CLERK

No. 73-1206

# In the Supreme Court of the United States

OCTOBER TERM, 1973

FRANK VALENTI, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

**ROBERT H. BORK,**
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

# In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1206

FRANK J. VALENTI, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Following a jury trial in the United States District Court for the Western District of New York, petitioner was convicted of conspiracy to extort and five substantive acts of extortion in violation of the Hobbs Act, 18 U.S.C. 1951.[1] He was sentenced to six concurrent terms of twenty years' imprisonment and fined $60,000. The court of appeals affirmed without opinion on August 13, 1973 (Pet. App.). The petition was not filed until February 5, 1974, and is substantially out of time under Rule 22(2) of this Court's Rules. There is, in any event, no reason to grant the writ.

[1] The jury found petitioner not guilty of two other acts of extortion.

Petitioner's sole contention, that the prosecutor's closing argument was prejudicial, is identical to a contention raised by petitioner's co-defendant in *Zito* v. *United States,* No. 73-5406, certiorari denied December 3, 1973. We rely upon our opposition to the petition in that case.[2]

Additionally, we note that the testimony of the extortion victims indicated that petitioner was in charge of the conspiracy and acts of extortion for which the defendants were convicted (Tr. 98, 111–116, 122–133). Petitioner offered the testimony of only one witness. Its purpose was to impeach the victim's credibility in regard to a loan he had once made (see Tr. 699–700, 1085–1089). The government later demonstrated that the loan was not improper. (Tr. 589–591, 623). In any event, the propriety of the loan was not a direct issue in this case. When considered in the light of the evidence presented at trial and in the context of the whole summation, any possible prejudicial impact of the prosecutor's remarks was minimal.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
*Solicitor General.*

MARCH 1974.

[2] A copy of the government's opposition in *Zito* has been forwarded to petitioner's counsel. In his petition Zito cited and objected to the same language cited by petitioner.

U.S. GOVERNMENT PRINTING OFFICE: 1974